

Application Serial No. 10/542,540  
Response to Office Action dated March 30, 2009

PATENT  
Docket: CU-4300

### REMARKS

At the mailing of the Office Action, claims 1-26 are pending and are rejected. The Applicant believes that this amendment is responsive to the Office Action and overcomes the rejections.

The Examiner objected to the Abstract of the Application. The Abstract section has been amended herein. The Amendments to the Abstract can be viewed in the Amendments section of this paper beginning on page 3. The Applicant submits that the amendment is fully responsive to the objection and requests that the Examiner withdraw this objection.

The Examiner also objected to the Drawings. The specification has been amended to clarify that "4" is membrane. No new matter has been added by way of this amendment. The amendments to the specification can be viewed in the Amendments section beginning on page 3 of this paper. The Applicant believes that this amendment is fully responsive to the objection and respectfully requests that the Examiner withdraw this objection to the Drawings.

#### **Rejection of Claims 1-26 under 35 U.S.C. § 103(a).**

The Examiner asserts an obviousness rejection of Claims 1-5, 10-11, 13-22, and 25 under 35 U.S.C. § 103(a), as being unpatentable over Suffa et al. (WO 95/26306) in view of Esposito Jr. (U.S. 3,232,499); claims 6-7 are rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Meins (U.S. 4,415,097); claims 8 and 23-24 are rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Croyle (U.S. 3,321,114); claim 9 are rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Laauwe (U.S. 4,747,518); and claims 12 and 26 are rejected as being unpatentable over Suffa in view of Esposito Jr. and further in view of Baudin et al. (U.S. 5,924,605).

The Applicant respectfully disagrees and submits that claims 1-26 are non-obvious

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and patentable.

The rejection of independent claim 1 based on Suffa in view of Esposito Jr. does not teach or suggest all of the features of claim 1, and therefore, claim 1 remains non-obvious.

The present invention provides a valve assembly for a drinking mouthpiece which reliably enables the removal of liquid upon application of external pressure while preventing any escape of liquid in a position of non-use.

This is achieved by providing a membrane 4 resting on a supporting element 7, wherein the application of external pressure and/or the application of an underpressure causes the membrane 4 to resnap from an inwardly curved closed position (cf. Fig. 4 of the present application) to an outwardly curved open position (cf. Fig. 5) in which valve openings 5, 15 of the membrane 4 and the supporting element 7, respectively, are released. This resnapped, outwardly curved open position of the valve membrane 4 according to the present application is neither anticipated nor rendered obvious by the prior art documents cited in the outstanding Office Action.

In particular, the main document drawn upon by the Examiner, Suffa, relies on a release mechanism different from the present invention insofar that it does not involve a membrane resnapping into an outwardly curved position, as becomes already clear from a simple visual comparison between Fig. 5 of the present application and Fig. 4 of Suffa, each illustrating the open position of the valve membranes 4 and 2, respectively.

According to Suffa, the flexible membrane 2 is lifted from its seat or support element 17 when a certain pressure is applied to a bottle onto which the disclosed closure with membrane 2 can be mounted. In contrast to the present invention, however, upon application of pressure the shape of membrane 2 merely changes from an inwardly curved or concave shape to the shape shown in Fig. 4 of Suffa which is specifically described in the specification (cf. German text, p. 8 ll. 263-265) as severely weakened concave shape

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with a tendency for leveling out; an outwardly curved shape, however is explicitly dismissed (cf. German text, p. 8 ll. 268-270). Thus, Suffa merely teaches an at most horizontal alignment of membrane 2 in its open position.

Contrary to this, the technique according to the present invention as defined by independent claim 1 relies on the membrane 4 resnapping into an outwardly curved open position at the application of pressure. Thereby, the membrane 4 is in a comparably stable state in its open position which prevents the valve opening 5 of the membrane 4 from being immediately closed again by a slight, involuntary application of pressure to the membrane (cf. original specification, p. 3 para. 5). This is clearly an advantage over the closure taught by Suffa, where the at most horizontal shape of the membrane 2 in its open position will not guarantee the required stability against minor variations of the applied pressure during the release of liquid.

Esposito Jr. was cited to provide that the use of the present valve assembly for a drinking mouthpiece is obvious. However, since Esposito Jr. does not anywhere mention or suggest a resnapped open position of a membrane in a valve assembly either, even an inadmissible combination of Suffa with Esposito Jr., does not reveal all of the features of claim 1.

The Applicant submits, therefore, that claim 1 is non-obvious because all of the features are not taught or suggested by the combination of references. The Applicant respectfully requests, therefore, that the Examiner withdraw this rejection as to claim 1.

It is axiomatic that if an independent claim is allowable, a claim depending therefrom is likewise allowable. The Applicant submits that since claims 2-26 depend from allowable claim 1, claims 2-26 are likewise allowable. The Applicant further notes that the additional features found in the dependant claims serve to further distinguish the claimed combination from the prior art. The Applicant respectfully requests, therefore, that the remarks over claim 1 be both reflected in the dependant claims and overcome the rejection thereof. The

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Applicant submits that claims 2-26 are also non-obvious and allowable, and respectfully requests that the Examiner withdraw this rejection of claims 1-26 claims.

### CONCLUSIONS

The Applicant respectfully contends that all conditions of patentability are met in the pending claims and requests that the amendments to the specification be entered into the record. The Applicant respectfully submits that this application should be in condition for allowance and respectfully requests favorable consideration.

Respectfully Submitted,

6/29/2009



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